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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE CITY OF POMONA, Plaintiff and Respondent, v. LEONARD HEISELT, Defendant and Appellant.	B234603 (Los Angeles County Super. Ct. No. KS015140)

APPEAL from an order of the Superior Court of Los Angeles County, Robert M. Martinez, Judge. Affirmed.

Law Office of Stephen A. Madoni, Stephen A. Madoni for Defendant and Appellant.

Alvarez-Glasman & Colvin, Arnold M. Alvarez-Glasman and David H. King, for Plaintiff and Respondent.

INTRODUCTION

Defendant and appellant Leonard Heiselt appeals from an order granting a permanent injunction pursuant to Code of Civil Procedure, section 527.8[1]. Defendant contends that there is insufficient evidence to support the issuance of the injunction. We affirm.

FACTUAL BACKGROUND

A. Defendant's Employment and Claims for Worker's Compensation and Industrial Disability Retirement

For 21 years defendant was a United States Marine, and since February 2002 he worked as a police officer for the police department of plaintiff and respondent, the City of Pomona. According to defendant, in March, 2009, he sustained injuries to both shoulders, left bicep, and left elbow, while in the course of his employment. At that time defendant filed a worker's compensation claim for his injuries, and went on "light duty." In September 2010, a sergeant from plaintiff's police department informed defendant that the police department could not reasonably accommodate his work restrictions and sent defendant home. Defendant also testified that he had a hearing disability that sometimes causes him to speak loudly.

Defendant was represented by counsel in his worker's compensation case from August 2009 until that case was resolved. Defendant testified that commencing in August 2009 he "work[ed] with" plaintiff's human resources department to resolve his worker's compensation "issues." The record does not disclose when defendant's worker's compensation case was resolved, but defendant testified on May 20, 2011, that it had been resolved by then.

Defendant also testified that, "I had asked [the employees in plaintiff's human resources department] on several occasions whether [plaintiff was] going to submit [for]

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[1] All statutory citations are to the Code of Civil Procedure unless otherwise noted.

my [industrial disability retirement] or whether [plaintiff was] going to create a position for me." Defendant declared that as of July 2010, plaintiff "still failed to file my Industrial Disability Retirement, despite a request to do so by my worker's compensation attorney." Defendant testified that on February 15, 2011, Christopher Millard, plaintiff's risk manager, told him that plaintiff "was not going to file [for defendant's] industrial disability retirement and that [defendant] would need to get an attorney." On February 15, 2011, defendant had been placed on administrative leave. On February 19, 2011, defendant retained counsel to represent him in connection with his claims for industrial disability retirement. On May 6, 2011, defendant declared in opposition to plaintiff's request for a permanent injunction pursuant to section 527.8 that, "I no longer have any business with [plaintiff], as my attorneys have handled all issues or are in the process of handling all issues for me."

B. Defendant's March 2010 Telephone Call to Bill Johnson

Sandy Johnson (S. Johnson), an office assistant in plaintiff's human resources department, testified that in approximately March 2010, she heard a telephone conversation, which was on the "speaker phone," between defendant and Bill Johnson (B. Johnson), plaintiff's human resources director at the time. Defendant was "very loud" and wanted to know about his worker's compensation case. B. Johnson informed defendant that "he was litigating, he had an attorney, and he needed to deal with his attorney." Defendant stated that he "wanted answers and he wanted them then." Defendant said "something to the effect of, 'Do I have to cock my gun?' or '[M]y gun is cocked.'"

Rebecca Valadez, an assistant in plaintiff's human resources department, testified that during the conversation defendant was "extremely upset," there was "a lot of screaming [and] yelling," and B. Johnson made "a lot of efforts to try to calm [defendant] down." S. Johnson thought defendant was "a nut" and "scary." The incident made S. Johnson to become concerned for her safety if defendant ever came into the human

resources office again. Valadez testified that her co-workers told her that defendant "was not to come back into the department."

C. Defendant's June 2010 Visit to Plaintiff's Human Resources Department

Defendant testified that in June 2010, as instructed by his supervisor, he went to plaintiff's human resources department at plaintiff's City Hall to deliver proof of when his temporary disability began. S. Johnson testified that defendant went to plaintiff's human resources department to see Pat Whitfield, plaintiff's worker's compensation examiner, about money he believed should be reimbursed to him for medical expenses.

S. Johnson testified that "[n]ormally, they would not have seen him because he is litigated, has an attorney, but he had voiced some concerns and wanted to speak with" Whitfield. Whitfield allowed defendant to come back to her office.

Defendant testified that he spoke with Whitfield, and told her "I had just wasted three hours of my day" and that she "was inept and incompetent and couldn't think outside the box" because she could have telephoned defendant's physician to obtain the information. S. Johnson testified that defendant "started yelling at [Whitfield] telling her that he knew the . . . worker's compensation laws." Defendant, while in Whitfield's very small office and about three feet from her, "kept yelling and yelling" at Whitfield that she did not know what she was doing and he wanted answers. According to S. Johnson, defendant "was screaming and cussing and he was pissed." Defendant testified that he did not yell during his meeting with Whitfield, but that the conversation "was pretty much one way. I didn't want to hear what she had to say. . . ."

S. Johnson testified that Whitfield told defendant, "You need to contact your attorney because you're litigated. I'm not really suppose[d] to discuss things with you." Whitfield told defendant to sit and "calm down." Defendant replied "something . . . like, 'I am not going to fucking sit down. I don't have to.'" Defendant "got so loud and belligerent;" he was screaming and "[f]lailing his hands."

S. Johnson testified that the incident was scary, defendant was "very intimidating," and she was "extremely concerned" for Whitfield's safety. S. Johnson ran to get Millard because the incident "scared me." Millard is Whitfield's supervisor. S. Johnson testified that she told Millard "we've got a problem. [Defendant] is screaming and yelling in [Whitfield's] face."

Millard testified that he went into Whitfield's office and defendant was "leaning forward somewhat, talking in an extremely loud voice and pointing" at Whitfield. Defendant was disputing unreimbursed mileage concerning his worker's compensation claim. Millard asked defendant "to calm down," but defendant continued to yell. Defendant testified that there was a large male that came into the doorway who said something, and defendant told him to mind his own business. S. Johnson testified Millard told defendant to leave, and defendant complied and was upset when he left. Millard testified that defendant "stormed out of" Whitfield's office and out of the human resources department.

S. Johnson testified that she went to the restroom, and when she exited it she saw City of Pomona Police Department Officer Brian Hagerty, assigned to plaintiff's crime prevention unit, in the hallway. S. Johnson told Officer Hagerty that defendant had been "there raising hell and that he was a nut." Officer Hagerty responded, stating that defendant "shouldn't be allowed in the office anymore. If he comes again, come and get me and/or call 9-1-1." Millard testified that the incident caused Whitfield to be "upset," and she said that she never wanted to deal with defendant directly again.

D. Defendant's November 2010 Visit to Plaintiff's Human Resources Department

Defendant declared that he received a letter from Whitfield stating that she would contact him by November 1, 2010, regarding his "disability status." Millard testified that on September 7, 2010, Whitfield sent defendant a letter regarding his worker's compensation claim advising him to call her if he had any questions regarding the information she provided in the letter.

Defendant testified that in the middle of November 2010, he went to plaintiff's human resources department to address Whitfield's letter because the department had not advised him "whether they were going to retire me medically or whether they were going to create a position [for him]." Defendant declared that he also went to the human resources department to request reimbursement for certain medical costs. Defendant declared that Whitfield told him that "she had not resolved my issue." According to defendant, although he told Whitfield that she was incompetent and inept, and he was very curt, he did not curse at, physically threaten, or try to scare Whitfield during his conversation with her. Defendant declared that Whitfield told him that she would notify him in writing about his "status."

E. Defendant's December 2010 Visit to Plaintiff's Human Resources Department

S. Johnson testified that in December 2010, defendant went to the human resources department and attempted to see Whitfield, but she refused to see him. Defendant testified that he went to the human resources department because he had not received anything in writing as to whether plaintiff was going to "medically retire" him or whether they were going to create a position for him. Millard submitted a declaration in support of the injunction stating that defendant went into the human resources department in City Hall "unannounced and without any scheduled appointment."

Susan Paul, plaintiff's human resources risk management director, testified that Whitfield told her she was afraid to talk to defendant. S. Johnson testified that defendant therefore demanded to see Susan Paul, plaintiff's Human Resources Risk Management Director. Paul had replaced B. Johnson when he retired. Paul agreed to see defendant.

Paul testified that defendant told her that he "had gotten in [Whitfield's] face" because he "had issues" with her. Defendant told Paul that "getting in people's faces" was the way he "got things done." According to Valadez, defendant said "the only way that he would get things done if he had to was by intimidation." Paul responded that such conduct was not an acceptable way to conduct business with plaintiff, and that although

she was a new employee, he should tell her about his issues so she can try to respond to them.

Paul testified that during their conversation defendant expressed that he was not being reimbursed for travel and prescription costs, and defendant was interested in knowing "his status with" plaintiff. During the conversation defendant told Paul that he had a military history and he "was an expert or new [sic] about guns. . . ." Defendant testified that he owns twelve handguns and rifles, but he does not recall ever telling anyone from plaintiff's human resources department that he possessed guns.

S. Johnson testified that defendant told Paul he knew the worker's compensation laws and his case was not being handled properly. During the conversation, defendant's voice was raised and he was aggravated. Valadez testified that defendant "was very, very upset" during the meeting, and Paul was trying to calm defendant but defendant "was yelling over her." Paul testified that defendant was "very aggressive" and "agitated," but "I wouldn't say he was yelling." S. Johnson described defendant's demeanor as "agitated," and Valadez said that defendant was "very upset" and "was raising his voice." Paul was "concerned about [defendant's] interaction with the office."

S. Johnson and Paul testified that Paul told defendant that she would try to have someone contact him with answers to his questions. Paul testified that she reminded defendant that "he should be doing business with our office through his attorney."

S. Johnson testified that when defendant left, he was upset. This incident made Valadez "nervous" because of defendant's "tone of voice and how loud it was and it went on for a while."

According to defendant, "There were no problems during this meeting." Defendant said he did not use any foul or abusive language "against" Paul, did not try to physically intimidate her, and did not call Paul any names. Defendant testified that Paul "was very pleasant and [it] was a fairly jovial conversation." Defendant stated declared that he was contacted by Millard who stated that "he would look into the matter and that he would notify [defendant] of the results."

S. Johnson testified that in the week around December 25, 2010, defendant called Whitfield about 17 times and did not leave a message. S. Johnson said Whitfield believed that it was defendant who placed the telephone calls because Whitfield had placed defendant's telephone number on a post-it note, attached the post-it note to her computer, and she saw that the telephone number that appeared on her telephone display matched the number on the post-it note. S. Johnson also saw that the telephone number on the display matched the telephone number on Whitfield's post-note. S. Johnson testified that to her knowledge Whitfield did not reply to the telephone calls by calling defendant. Defendant denied placing those telephone calls to Whitfield and testified that his telephone number is not listed.

F. Defendant's February 2011 Visit to Plaintiff's Human Resources Department

S. Johnson and Valadez testified that in February 2011, defendant went to plaintiff's lobby and said he wanted to speak with Millard. Defendant raised his voice and held up his telephone, saying "I want[] to show [Millard] something. I want to come back in there." Defendant said Millard "left me a message or called me and didn't leave a message, and I want to know why he called me." Defendant testified that he went to the human resources department to get a "definitive answer" as to whether plaintiff is going to retire him or create a position for him.

Defendant testified that the receptionist in the human resources department opened the department's security gate and let him through. Millard testified that Valadez came into his office, said that defendant was there, would like to discuss "his claim," and Valadez inquired whether Millard could meet with defendant. Millard asked Valadez whether defendant was calm, and Valadez responded yes. Millard, said "Absolutely." S. Johnson testified that she told Millard defendant is "not suppose to come in here," and Millard responded, "Oh, it'll be Okay. He can come in." Millard testified that Valadez escorted defendant to Millard's office.

Millard attempted to greet defendant by shaking his hand, but defendant told Millard that he's "not [Millard's] friend," and defendant moved one of Millard's office chairs as far back in the room as possible and sat down. Millard testified that the following exchange occurred: "[Defendant:] Well? [¶] [Millard:] Well, what? [¶] [Defendant:] Well, the phone call. You remember the phone call?" At the time Millard could not specifically recall making a telephone call to defendant. Defendant then said, "The call that you left at my house." Millard then had a vague recollection that in December 2010 he made a telephone call to defendant and left a voice mail message for him that the human resources department was having trouble with their computer software and Millard would contact defendant about the status of his claim. Millard told defendant Millard had a vague recollection of placing a telephone call to defendant. Defendant testified that he thought Millard was an "asshole," and defendant used some profanity, including on several occasions using the word "fuck." Millard testified that defendant stood up and said he would just deal with Paul and left Millard's office.

S. Johnson described defendant's demeanor as "agitated," and defendant's presence "bothered" and "scared" her. S. Johnson and Valadez testified that defendant looked "disheveled" and mad. S. Johnson was concerned because defendant "was told not to come back and he kept coming back. He was very loud and belligerent, and he tries to intimidate people and I think he's frightening."

Millard testified that approximately two minutes after defendant left Millard's office, defendant reappeared in the office. S. Johnson testified that immediately upon entering Millard's office defendant started "screaming" at Millard wanting "to know why the fuck did [Millard] call him and not leave a message sometime in December." Millard responded, "What are you talking about?" Defendant testified that he asked Millard whether plaintiff is "going to retire [him] or [is it going to] create a position [for him]," and Millard responded, "If you want a retirement, you need to hire an attorney." Defendant said, "I'm tired of this fucking bullshit around here," and that "I want answers. I have given my life for this department and for my country, and I get no fucking respect around here. And I want answers and I want my case resolved immediately."

Millard testified that defendant played a recording of a voicemail message for Millard, and when Millard responded that he remembered leaving the message, defendant "launched into yelling and screaming." Millard testified that, "When [defendant] was screaming and having his rant, . . . some spittle [was] coming out [of his mouth], . . . [and] it seemed to me that the more that he raved and ranted, the more worked up he got." Millard said, "As [defendant] was ranting and raving and yelling and screaming, [defendant] got close and closer [to Millard], and . . . the upper part of [defendant's] body was leaning over [Millard's] desk a little tiny bit."

S. Johnson testified that defendant also screamed at Millard, "And I want to know why your employees are calling my house and wanting to know about my [*sic*] and my wife's sex life." Millard responded, "What?" S. Johnson testified that "a couple of us heard [defendant's accusation that plaintiff's employees were calling his home and inquiring about his and his wife's sex life] and thought at that point [defendant] was delusional. . . ."

S. Johnson testified that defendant was screaming and "flailing" his arms, and according to S. Johnson, "he flipped." Valadez testified that most of the conversation consisted of defendant yelling. S. Johnson testified that defendant said, "I want fucking answers and I want to be treated with fucking respect around here."

Millard testified that he asked defendant to please calm down and lower his voice. Defendant responded by yelling at Millard, "No, I will not lower my voice. This is how I get things done. I intimidate people." Millard told defendant, "You need to just go and speak with your attorney and deal through your attorney."

Paul testified that someone came into her office, visibly upset, and told Paul that defendant was there and he's "screaming and yelling" at Millard. Paul went to Millard's office and she saw defendant was standing and "pointing and he was very red, very agitated, very angry." Defendant testified that Millard asked defendant to calm down and that he was going to call the watch commander. Defendant replied, "Go ahead, call the watch commander. Maybe he can spur these idiots into doing something." According to defendant, "I had my little diatribe. . . ."

S. Johnson testified that Paul called 911 two times, and S. Johnson also called 911 because she did not believe the police were responding timely. S. Johnson was "scared," and "ran" to Officer Hagerty. She told Officer Hagerty that "[defendant is] here. He's screaming and cussing and he's flipped." S. Johnson felt the need to see Officer Hagerty because she "thought [defendant] was dangerous. [S. Johnson] thought he was scary and was going to do something that would cause a problem." S. Johnson believed defendant was "totally out of control." Officer Hagerty testified that he went to Millard's office and defendant was "yelling" while communicating with Millard.

Officer Hagerty testified that someone from the human resources department walked by Millard's office, and defendant "went right to that person, and [defendant] started yelling and coming closer." Defendant said loudly, "You're the one that didn't return my phone calls." Defendant testified that that he saw Paul and said, "I blurted out, 'You fucking liar. You fucking lied to me. You told me you were going to take care of this and you didn't. You're a fucking liar.'" S. Johnson testified that Paul told defendant, "you need to calm down," and defendant responded by pointing his finger in her face and saying, "shut the fuck up." Paul backed up. According to defendant, although he was upset and frustrated during the meeting, he never made any threats or behaved in a violent manner.

S. Johnson and Officer Hagerty testified that Officer Hagerty tried to talk to defendant and calm him, but it did not work. Defendant continued to scream that he "was getting jacked around and 'treated like shit.'" Officer Hagerty testified that because he could not calm defendant, he started to reach for his telephone to call for additional police officers "to get over here." S. Johnson testified that approximately six to ten police officers arrived at the scene, and approximately two or three of them attempted to calm defendant. Defendant said, "Oh, I see what's going on here" and "I'm going home." One of the police officers attempted to place his hands on defendant's arms, and defendant pulled away saying, "Get your fucking arms off me. I'm going home." Defendant testified that he said to Officer Rivera, "Don't grab my shoulder, please."

S. Johnson testified that defendant and the police officers went into the break room until they could calm defendant. At this time, there were also several police officers in the lobby. When the police officers took defendant from the break room to the lobby, a couple of them patted defendant, saying, "It's okay," and two of them called defendant by his first name. Officer Hagerty testified that he did not arrest defendant, and he had no basis to do so. Officer Hagerty then testified that he could have arrested defendant for violation of Penal Code section for disturbing the peace. In response to the trial court's comment that it was complicated because defendant was part of the police department, Officer Hagerty stated, "Yes. It was very difficult."

Millard testified that after the incident, the employees in the human resources department "expressed extreme fear that [defendant] would come back again, [that] this time he would come back armed, and they wanted to know what [plaintiff] was going to do to protect them. S. Johnson testified that "We were concerned that [defendant] would come back at any time because it was like he was such a short fuse and, you know, he snapped so quick, you know, that we're unsure of what he was capable of or what he could do because he was so pissed."

Valadez testified that several of the employees told Paul that "we were pretty shaken up by the whole thing and were concerned about safety within the office." Paul testified that her staff was "clearly upset" by the incident.

Paul testified that she was not concerned for her own safety, but she was concerned about the safety of Millard and the other employees in the human resources department. She testified that if a more permanent injunction was not granted, she would have concerns about the safety of her staff because defendant "has made it a point to let everyone know that he has guns and that's what people are afraid of."

Millard testified that, as a result of the incident, he was "extremely" afraid for his safety. He stated, "I considered not coming to work the next day. . . . [¶] I was afraid [defendant] would show up again. I don't know what he would do and, you know, either in the Human Resources offices or in parking lot of City Hall. I don't know. I just—I was afraid and I just didn't want to deal with it anymore." Millard believed that he could

easily be hurt by defendant because defendant was a police officer, and police officers are trained "to use force to control suspects and that's in the back of my mind." Millard declared that defendant became "increasingly angrier and more intimidating and threatening each time he [came] to the [human resources] department, and. . . the situation . . . escalat[ed]" After the temporary restraining order (TRO) was in place, Millard did not have concerns about coming to work, but he testified that if plaintiff's request for a more permanent injunction was denied, he would be concerned "[n]ot only [for] my safety but the safety of my staff."

Valadez testified that the incident made her fearful, and was concerned about going to work. S. Johnson testified that she was "very scared." Paul told the human resources employees that if anything ever happened again like the February 15, 2010, incident, they were to "get out of there as quick as possible and wait for the police."

PROCEDURAL BACKGROUND

Pursuant to plaintiff's request, on February 23, 2011, the trial court issued a TRO against defendant pursuant to which he was ordered, inter alia, not to commit acts of violence or make threats of violence against plaintiff's employees working at City Hall, including employees in the human resources department and risk management department (employees); go within 100 yards of employees' homes or workplaces; or go within 100 yards of City Hall and the City of Pomona Police Department. Defendant was also ordered to dispose of any guns or other firearms in his immediate possession or control. The TRO was to expire on March 11, 2011, the date the trial court set the matter for hearing.

On March 11, 2011, the hearing was continued to May 20, 2011, and a new TRO was issued that was essentially identical to the February 23, 2011, TRO. At the May 20, 2011, hearing, the trial court granted plaintiff's request for the permanent injunction, stating, "You know, police officers are held in high esteem by the public because they do a job that is a difficult one and one that most people don't want to do. The public likes to think that law enforcement agencies are very careful and selective in hiring individuals to

patrol their cities and to protect the needs of the community. Police officers are referred to as peace officers. They maintain the peace. People entrust their homes, their values, their children in peace officers. And when a peace officer goes into an area and makes demands, uses profanities, makes references to guns, who appears to be obsessed with entitlement—and I'm not here to decide whether you are entitled or not, but what you portray is a frustrated, bitter, angry, abusive, rude, and hateful individual; and you think that you are entitled to demand of anyone to explain 'what the fuck business is it of yours?' [¶] When people see a peace officer, a man, who is entitled to carry a gun, concealed or otherwise, and who is entrusted with upholding the laws and protecting the citizenry, people get frightened like hell and say, 'what is going on with this peace officer?' [¶] You have brought this problem upon yourself, sir. . . . [¶] You're dangerous. No, I can't say that. You cause fear that you're dangerous. And I don't believe that the H.R. Department or City Hall has conspired to somehow set you up with accusations that they would go so far as to call 9-1-1 on a police officer and that even one officer, someone that you know, is incapable of calming you and there's still a need for six of seven more. [¶] You weren't arrested, but I'll tell you, some citizen walked into City Hall or the police department and started demeaning people, yelling at them with profanities or whatever, that person would have been arrested so quickly. And the only reason you weren't arrested is because of your employment and perhaps the loyalty of someone in your department and perhaps because of the embarrassment that you've brought on a department. [¶] The temporary restraining order will become permanent for a period of three years. The defendant is not to be in possession of any firearms during that period of time."

Pursuant to section 527.8, the trial court issued a "Restraining Order After Hearing To Stop Workplace Violence" (Restraining Order). It was scheduled to expire on May 19, 2014, and was essentially identical to the prior TROs, but defendant was not ordered to stay at least 100 yards away from the City of Pomona Police Department.

DISCUSSION

A. Standard of Review

"On appeal . . . we review an injunction issued under section 527.8 to determine whether the necessary factual findings are supported by substantial evidence. (*USS-Posco Industries v. Edwards* [(2003)] 111 Cal.App.4th [436,] 444.)" (*City of San Jose v. Garbett* (2010) 190 Cal.App.4th 526, 538.) "Under the substantial evidence standard of review, our review begins and ends with the determination as to whether, on the entire record, there is substantial evidence, contradicted or uncontradicted, which will support the trial court's factual determinations. (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874 [197 Cal.Rptr. 925]; *Piedra v. Dugan* [(2004)] 123 Cal.App.4th [1483,] 1489.)" (*Ermoian v. Desert Hospital* (2007) 152 Cal.App.4th 475, 501; see *Carpenter & Zuckerman, LLP v. Cohen* (2011) 195 Cal.App.4th 373, 378; *City of San Jose v. Garbett, supra,* 190 Cal.App.4th at p. 538 [we are required to "resolve all factual conflicts and questions of credibility in favor of the prevailing party, and draw all reasonable inferences in support of the trial court's findings"].)

B. Legal Principles

The version of section 527.8 in effect at the time of the May 20, 2011, hearing, provided in pertinent part, "(a) Any employer, whose employee has suffered . . . a credible threat of violence from any individual, that can reasonably be construed to be carried out or to have been carried out at the workplace, may seek a temporary restraining order and an injunction on behalf of the employee and, at the discretion of the court, any number of other employees at the workplace, and, if appropriate, other employees at other workplaces of the employer. [¶] (b) For the purposes of this section: [¶] . . . [¶] (2) 'Credible threat of violence' is a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose. [¶] (3) 'Course of conduct' is a pattern of conduct composed of a series of acts over a period of time, however short,

evidencing a continuity of purpose, including . . . entering the workplace . . . . [¶] . . . [¶] (f) Within 15 days of the filing of the petition, a hearing shall be held on the petition for the injunction. The defendant may file a response that explains, excuses, justifies, or denies the alleged . . . credible threats of violence . . . . At the hearing, the judge shall receive any testimony that is relevant and may make an independent inquiry. . . . If the judge finds by clear and convincing evidence that the defendant . . . made a credible threat of violence, an injunction shall issue prohibiting further unlawful violence or threats of violence."

Section 527.8 authorizes "any employer to pursue a [temporary restraining order] and an injunction on behalf of its employees to prevent threats or acts of violence by either another employee or third person. . . . The express intent of the author of the legislation was to address the growing phenomenon in California of workplace violence by providing employers with injunctive relief so as to *prevent* such acts of workplace violence. [Citations.]" (*Scripps Health v. Marin* (1999) 72 Cal.App.4th 324, 333-334 (*Scripps*).)

C. Analysis

1. Credible Threat of Violence

Defendant contends that there is insufficient evidence to support a finding that his actions constituted a credible threat of violence under section 527.8. We disagree.

A credible threat of violence is, inter alia, a course of conduct that would place a reasonable person in fear for his or her safety, and that serves no legitimate purpose. (§ 527.8, subd. (b)(2); *Franklin v. The Monadnock Co.* (2007) 151 Cal.App.4th 252, 259-260.) A course of conduct, in turn, is a series of acts evidencing a continuity of purpose. (§ 527.8, subd. (b)(3).) Defendant's subjective intent is "not required for his conduct to be deemed a credible threat. . . . [There is no] requirement that the defendant intend to cause the person to believe that he or she had been threatened with death or serious injury. It . . . requires only a statement made knowingly and willfully, which would place

a reasonable person in fear for his or her safety. [Citation.]" (*City of San Jose v. Garbett, supra,* 190 Cal.App.4th at pp. 538-539.)

There is sufficient evidence to support a finding that defendant engaged in a series of willful acts evidencing a continuity of purpose that would place a reasonable person in fear for his or her safety. There was evidence that defendant was a United States Marine for about 21 years, and a police officer for approximately 10 years. Defendant owned twelve handguns and rifles. Defendant, a police officer of approximately ten years, made known to plaintiff's employees that he had a military background and was an "expert" on guns. Defendant demanded that one of plaintiff's employees provide him with immediate answers to his questions, and said something to him to the effect of, "Do I have to cock my gun?," or "my gun is cocked." (See *City of San Jose v. Garbett, supra,* 190 Cal.App.4th at pp. 532, 537-541 [The statement, "Do you have to . . . take matters into your own hands like the Black man in Missouri," made to someone who understood the defendant to be referring to a specific incident in which an angry man in a Missouri city shot and killed several people, was a credible threat]; *USS-Posco Industries v. Edwards, supra*, 111 Cal.App.4th at p. 444 [defendant's reference to carrying a gun in his car, threats of bringing a gun to work, and statements that he would kill certain employees constituted "ample evidence to support [the defendant's supervisor's] fear for her safety"]. Defendant referred to the guns he possessed. There is evidence that defendant made demands on plaintiff's employees and did so by "getting in their face"—screaming uncontrollably at them, waving his arms around, leaning his body toward the person at to whom he was yelling, and using profanity. There is evidence that on numerous occasions defendant became so angry during his conversations with plaintiff's employees that plaintiff's employees and police officers tried to calm defendant, but their attempts were often in vain. The evidence of defendant's series of acts of "getting in people's faces" and otherwise intimidating people in an attempt to get what he wanted, is sufficient evidence of plaintiff's employees being reasonably placed in fear for their safety.

Defendant contends that in determining whether there is sufficient evidence to support a finding that defendant engaged in a series of acts evidencing a continuity of purpose that would place a reasonable person in fear for his or her safety, Millard's declaration in support of the injunction should be disregarded as improper hearsay. The record does not, however, disclose that defendant objected in the trial court to the consideration of Millard's declaration on that basis, and as such, defendant forfeited the contention on appeal. (*Keener v. Jeld-Wen, Inc.* (2009) 46 Cal.4th 247, 264-265.) In any event, the trial court properly could consider Millard's declaration. A trial court may "consider *all* relevant evidence, including hearsay evidence, when deciding whether to issue an injunction to prevent workplace violence pursuant to section 527.8." (*Kaiser Foundation Hospitals v. Wilson* (2011) 201 Cal.App.4th 550, 557.) In addition, even if the trial court could not properly consider Millard's declaration, there still is sufficient evidence that plaintiff's employees were reasonably in fear for their safety.

Defendant contends that he had a legitimate purpose for being at the human resources department because he was there addressing issues concerning his Worker's Compensation and Industrial Disability Retirement claims. Defendant essentially argues that as long as there was any "legitimate purpose" for his going to the human resources department, he was free to place plaintiff's employees' reasonably in fear for their safety without his being enjoined from doing so. There is sufficient evidence that defendant's course of conduct of going to the human resources department and intimidating plaintiff's employees and causing plaintiff's employees to reasonably fear for their safety served no legitimate purpose. Merely because he went to the human resources department regarding his worker's compensation and industrial disability retirement claims does not make his course of conduct "legitimate."

Defendant contends that because he was given permission to enter the human resources department on the various occasions he was there, and some individuals testified that they were not in fear of their safety during a particular contact with defendant, "it strains credulity and reasoning to make a finding that any [of his] actions . . . placed anyone in fear of their safety." In effect, defendant asks us to reweigh

the evidence and draw a conclusion different from that drawn by the trial court. That is not our role. Under the substantial evidence standard of review, we do not reweigh evidence or resolve evidentiary conflicts. (*Jessup Farms v. Baldwin* (1983) 33 Cal.3d 639, 660; *In re H.G.* (2006) 146 Cal.App.4th 1, 13.) Instead, as noted above, under the applicable law, we view the evidence in the light most favorable to plaintiff, the prevailing party, and give that evidence the benefit of every reasonable inference. (*Jessup Farms v. Baldwin*, *supra*, 33 Cal.3d at p. 660.)

2. Irreparable Harm

Defendant contends that there is insufficient evidence to support the trial court's finding that plaintiff would suffer irreparable harm if the injunction did not issue. We disagree.

"'[T]o obtain a permanent injunction under section 527.8, subdivision (f), a plaintiff must establish by clear and convincing evidence . . . that great or irreparable harm would result to an employee if a prohibitory injunction were not issued due to the reasonable probability unlawful violence will occur in the future.' [Citation.]" (*City of San Jose v. Garbett*, *supra*, 190 Cal.App.4th at pp. 537-538.)

There is sufficient evidence to support the trial court's finding that plaintiff would suffer irreparable harm if the injunction did not issue. There is evidence of a series of intimidating visits by defendant leading up to the February 15, 2011, incident, and defendant was "becoming increasingly angrier," and the situation seemed to be "escalating." There is evidence that multiple employees expressed concern that defendant would return to City Hall, armed, and seek to injure them. This included the following evidence: Valadez was concerned about going to work after the February 15, 2011, incident; Millard was "extremely" afraid for his safety, considered not going to work the day after the February 15, 2011, incident, fearing that defendant would go to the human resources department again, and believing that he (Millard) could easily be hurt by defendant because defendant was a police officer; and S. Johnson was concerned that defendant would come back to the human resources department at any time and was

unsure of what harm defendant would cause because he was "such a short fuse" and "snapped so quick[l]y." A finder of fact could also reasonably conclude defendant's actions suggested he was acting in a strangely unreasonable manner based on the evidence that defendant screamed at Millard wanting to know why his employees were calling defendant's house wanting to know about defendant's sex life with his wife.

Defendant relies on *Scripps*, *supra*, 72 Cal.App.4th 324, in support of his contention that there is insufficient evidence to support a finding that there is a reasonable probability his wrongful conduct will be repeated in the future. Defendant's reliance on *Scripps* is misplaced. In *Scripps*, the son of a hospital patient at the Scripps Health facility met with a hospital administrator to discuss his mother's care. When the son tried to leave the meeting, he pulled a door open, hitting the administrator, pushing her into a wall. (*Id*. at p. 328.) Thereafter, his mother transferred her health insurance, which rendered it unlikely she would return as a patient to a Scripps Health facility. The son had also voluntarily stayed away from the hospital. The reviewing court concluded: "[G]iven the circumstances surrounding this single incident, the evidentiary record does not establish the likelihood [the son] would repeat any violent acts against Scripps Health employees. Accordingly, the order granting the permanent injunction must be reversed." (*Id*. at p. 336.)

Defendant contends that, like *Scripps*, *supra*, 72 Cal.App.4th 324, there is not a reasonable probability that his wrongful conduct will be repeated in the future. Defendant was at the human resources department during the incidents complained of by plaintiff to address issues concerning his worker's compensation case and his claim for industrial disability retirement, but defendant argues that he no longer has reason to conduct any business with plaintiff. Defendant reasons that he no longer has reason to contact plaintiff's human resources department because as of May 20, 2011, his worker's compensation case had been resolved, and retained counsel to represent him in connection with his claim for industrial disability retirement.

Although defendant is now represented by counsel in connection with his claim for industrial disability retirement, he continues to maintain that claim against plaintiff.

Defendant's prior conduct was to contact plaintiff's human resources department concerning his worker's compensation claim despite being represented by counsel. Accordingly, there is sufficient evidence of a reasonable probability that defendant's actions will be repeated in the future, at least in connection with his claim for industrial disability retirement.

D. Conclusion

We reiterate that we make no determination of the veracity of defendant or any of the other witnesses. All we review is whether there is substantial evidence supporting the trial court's order. In doing so, we look at the evidence submitted by plaintiff and evidence supporting the trial court's order. Defendant's view of the facts is of course different from that relied on by the trial court, And defendant may have encountered some frustrations from the way his matters were being handled. But because we are limited to determining if there is substantial evidence supporting the trial court's determination, we cannot take into account the conflicting evidence submitted by defendant. Accordingly, we affirm the order.

DISPOSITION

The order is affirmed. Respondent is awarded its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MOSK, J.

We concur:

TURNER, P. J.

ARMSTRONG, J.